

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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| In the Matter of |) | |
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| AT&T Inc. Petition for Waiver of Section |) | WCB/Pricing File No. 07-08 |
| 61.42(g) of the Commission's Rules |) | |
| |) | |
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ORDER

Adopted: May 10, 2007

Released: May 10, 2007

By the Chief, Pricing Policy Division, Wireline Competition Bureau:

I. INTRODUCTION

1. AT&T Inc. (AT&T) filed a petition on March 12, 2007, seeking a limited waiver of section 61.42(g) of the Commission's rules to exclude its True IP to PSTN (TIPToP) service from any price cap basket in the upcoming 2007 annual access tariff filing.¹ For the reasons explained below, we grant AT&T the requested waiver for purposes of the 2007 annual access tariff filing.

II. BACKGROUND

2. AT&T has requested a limited waiver of section 61.42(g) of the Commission's rules so that it may exclude its TIPToP service from any price cap basket for purposes of the 2007 annual access tariff filing.² AT&T states that TIPToP "provides Internet Protocol Voice Information Service Providers (IP-VIS Providers) with connectivity" to the AT&T network.³ The service includes "one-way or two-way port interfaces that provide trunking and switching components in a single easy to use time division multiplexed interface."⁴ This interface provides connectivity to "AT&T users or non-AT&T users that are connected through (subtended by) AT&T Access Tandems."⁵

¹ *AT&T Inc. Petition for Waiver of Section 61.42(g) of the Commission's Rules and Request for Expedited Treatment*, WCB/Pricing File No. 07-08 (filed March 12, 2007) (AT&T Petition). AT&T filed the petition on behalf of Pacific Bell Telephone Company, Southwestern Bell Telephone Company, the Ameritech Operating Companies, Southern New England Telephone Company, and Nevada Bell Telephone Company. *Id.* at 1. See 47 C.F.R. §§ 61.42(g) (new services must be included in the annual price cap filing in the year after the one in which they are introduced), 61.43 (annual price cap filing requirements).

² AT&T Petition at 1-2. The Wireline Competition Bureau (Bureau) issued a public notice seeking comment on AT&T's petition. See *Comments Sought on AT&T Petition For Waiver of Section 61.42(g) of the Commission's Rules*, WCB/Pricing File No. 07-08, Public Notice, DA 07-1376 (Wireline Comp. Bur. rel. March 22, 2007).

³ AT&T Petition at 1.

⁴ *Id.* at 1.

⁵ *Id.* at 2.

3. TIPToP first was tariffed in November 2004 and therefore should have been included in the appropriate price cap basket in the 2005 annual access filing.⁶ SBC Services Inc. (now part of AT&T) requested a waiver to exclude TIPToP from price caps in the 2005 annual access tariff filing, and the Bureau granted the waiver on June 6, 2005.⁷ In 2006, AT&T again requested a waiver to exclude TIPToP from price caps in the 2006 annual access tariff filing, and the Bureau granted that waiver on May 25, 2006.⁸ Absent an additional waiver, AT&T would be required to include TIPToP in the appropriate price cap basket in the 2006 annual access tariff filing.⁹ The New Jersey Division of Rate Counsel (NJ Rate Counsel) is the only party to oppose the petition.¹⁰

III. DISCUSSION

4. The Commission may waive its regulations for good cause shown.¹¹ In general, the waiver request must demonstrate special circumstances warranting a deviation from the general rule and that such a deviation will serve the public interest.¹² We find that good cause exists to grant AT&T a limited waiver of section 61.42(g) for TIPToP services for purposes of the 2007 annual access tariff filing. We agree with AT&T that special circumstances exist due to the nature of the service and the limited demand for that service.¹³ In particular, we agree with AT&T that TIPToP does not fit squarely within the price cap structure because it appears to include both traffic-sensitive and trunking elements and that a waiver would preserve the *status quo* until the Commission determines the appropriate treatment of the service under the price cap regime.¹⁴ The Commission is considering the appropriate regulatory treatment of IP-based services, including the intercarrier compensation rules that apply to IP-originated traffic, in a number of open proceedings.¹⁵ The requested waiver will serve the public interest by permitting the Commission to address the appropriate regulatory treatment of IP-originated traffic in a more comprehensive manner before addressing more detailed issues, such as the appropriate price cap baskets within which particular new services should be placed.¹⁶

⁶ *Id.* at 2; see 47 C.F.R. § 61.42(g).

⁷ See *SBC Services Inc. Petition for Waiver of Section 61.42(g) of the Commission's Rules*, WCB/Pricing File No. 05-24, Order, 20 FCC Rcd 10102 (Wireline Comp. Bur. 2005).

⁸ See *AT&T Inc. Petition for Waiver of Section 61.42(g) of the Commission's Rules*, WCB/Pricing File No. 06-18, Order, 21 FCC Rcd 5968 (Wireline Comp. Bur. 2006).

⁹ AT&T Petition at 2; 47 C.F.R. § 61.42(g).

¹⁰ See Comments of the New Jersey Division of Rate Counsel, WCB/Pricing File No. 07-08, at 2-4 (filed April 5, 2007) (NJ Rate Counsel Comments).

¹¹ 47 C.F.R. § 1.3.

¹² See *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (citing *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969)).

¹³ AT&T explains that this service is not currently purchased by any unaffiliated customers. AT&T Petition at 3.

¹⁴ *Id.*

¹⁵ See, e.g., *Developing a Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, Further Notice of Proposed Rulemaking, 20 FCC Rcd at 4685 (2005); *IP-Enabled Services*, WC Docket No. 04-36, Notice of Proposed Rulemaking, 19 FCC Rcd 4863 (2004).

¹⁶ For this reason, we disagree with the NJ Rate Counsel that the relief requested by AT&T would be more appropriately considered in the context of a rulemaking because the waiver would have the effect of changing the price cap regime. NJ Rate Counsel Comments at 2. No change in the price cap regime has been requested by AT&T, and none is granted in this order.

5. We disagree with the NJ Rate Counsel that the Bureau lacks authority to act on the waiver petition.¹⁷ Grant of the limited waiver sought by AT&T would not address or resolve the issue of the appropriate price cap basket for AT&T's TIPToP service and thus would not result in any change to the Commission's rules, including the price cap regime. Rather, AT&T requests only that section 61.42(g) of the Commission's rules be waived until the Commission determines the appropriate regulatory treatment of IP-based services.¹⁸ Additionally, AT&T notes that, given the nature of the service, it is unclear whether it could fully incorporate TIPToP into either the trunking or traffic sensitive basket and any reasonable allocation between the two baskets could be quite difficult.¹⁹ Under these circumstances, a limited waiver of the Commission's rules is appropriate and well within the Bureau's delegated authority under sections 0.91 and 0.291 of the Commission's rules.²⁰

6. Further, continued regulatory oversight over TIPToP service will allow the Bureau to address any discriminatory or anti-competitive pricing that might occur.²¹ AT&T's TIPToP rates are subject to Part 61, subparts E and F of the Commission's rules, which provide protection against unreasonable rate increases.²² In particular, these rules require AT&T to justify any rate increases it seeks for its TIPToP service by providing cost and other supporting data in the tariff review process.²³ Moreover, excluding TIPToP from price cap baskets in the 2007 annual filing would not affect any price cap rates.²⁴ Thus, although TIPToP will remain outside of price cap regulation under the limited waiver granted here, we find that regulation pursuant to our Part 61 rules is sufficient to address the concerns raised by the NJ Rate Counsel concerning the effects of the waiver on the 2007 annual filing and the information available to assess those effects.²⁵

IV. ORDERING CLAUSE

7. Accordingly, IT IS ORDERED that, pursuant to sections 201-205 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 201-205, section 1.3 of the Commission's rules, 47 C.F.R. § 1.3, and the authority delegated pursuant to sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, section 61.42(g) of the Commission's rules IS WAIVED for TIPToP services offered by AT&T

¹⁷ NJ Rate Counsel Comments at 2.

¹⁸ See Reply Comments of AT&T Inc., WCB/Pricing File No. 07-08, at 2 (filed April 16, 2007) (AT&T Reply). Indeed, AT&T concedes that the Bureau likely does not have authority to adopt a new basket or service category for services like TIPToP. *Id.*

¹⁹ *Id.* at 1-2.

²⁰ See 47 C.F.R. §§ 0.91(b), 0.291(a) (stating that the Bureau has delegated authority to perform all the functions described in section 0.91 of the Commission's rules, including specifically the authority to act on requests for waiver of the rules).

²¹ AT&T Reply at 2-3.

²² See 47 C.F.R. Part 61, Subparts E & F.

²³ *Id.*

²⁴ See 47 C.F.R. §§ 61.47(a), (b) (describing service band index adjustments that are not required because TIPToP service will not be included in any price cap basket).

²⁵ NJ Rate Counsel Comments at 2.

with respect to AT&T's 2007 annual access tariff filing requirements under section 61.43 of the Commission's rules, 47 C.F.R. §§ 61.42(g), 61.43.

FEDERAL COMMUNICATIONS COMMISSION

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